

**Notice of Public Meetings
Town of Superior
Special Council Meeting
Wednesday-September 28, 2011-7:00 P.M.
Superior Senior Center
360 W. Main Street, Superior, AZ 85173
MINUTES**

A. CALL TO ORDER

Mayor Hing called the meeting to order at 7:06 p.m.

B. SALUTE TO THE FLAG

Mayor Hing led the salute to the flag.

C. OPENING PRAYER

Mayor Hing led the opening prayer.

D. ROLL CALL

Present: Council Members Hank Gutierrez, Chris Tomerlin, John Tameron, Gilbert Aguilar, Soyla "Kiki" Peralta, Mayor Michael Hing, Vice Mayor Olga Lopez; Absent: N/A

Staff Present: Town Manager Melanie Oliver, Deputy Town Manager/Police Chief Lou Digirolamo, Co-Town Attorneys Christopher Wencker and Chad Niven

E. EXECUTIVE SESSION:

The Town Council may or may not vote to go into Executive Session pursuant to

ARS 38-431.03(A-1) (A-3)

Discussion related to Town Manager – Melanie Oliver's leave of absence and legal advice from the Town Attorney Christopher Wencker

Mayor Hing said Council Member Peralta requested this special meeting concerning the manager's leave and extended leave. He said he received a note from Ms. Oliver waiving her right to a closed executive session. He asked Ms. Oliver if she had something to say and she began to speak after being asked by Council Member Peralta to move to the audience since she was not presently in a working capacity. Ms. Oliver spoke from the podium.

Ms. Oliver said she would read portions of a letter. Council Member Peralta said they could not hear her and to speak up. Ms. Oliver said she had received a doctor's letter dated September 19, 2011. She was going to read portions that she would share with the public. She read from the letter about the doctor recommending evaluation three months from now. She said that in the three months she has been off she feels much better and is making progress. She does not want to go backward, neither does the doctor want to see her go backward.

Mayor Hing said he was glad to see her there to address this issue. He was sorry for the condition of her health and hoped for her full recovery. He said he was concerned about the whole issue surrounding her illness and hoped they could get through this period of time. He asked if there were questions for Ms. Oliver since she had waived her right for the executive session.

Vice Mayor Lopez asked a question regarding the doctor's recommendation that Ms. Oliver be evaluated in three months. So at this point they really did not know if she'd be back in three months or six months? She made further comments requesting clarification.

Council Member Tameron began a question, but Attorney Wencker explained how medical information is part of the personnel file and prohibited from being disclosed.

Vice Mayor Lopez said she was not sure her question had been answered. She knew they were looking at three months for sure, possibly longer. That was all she wanted to know, ***did they answer that?***. ***Attorney Wencker said, "Right, I believe we did answer that."***

Council Member Tameron asked if the town had received that letter. How did they know she was going to be off three months? Ms. Oliver replied that it was turned into the office to the deputy town manager. Council Member Tameron said so the city does have a copy of that. Ms. Oliver said yes.

Council Member Aguilar asked if this was now workers' comp. Attorney Wencker said it is his understanding Ms. Oliver has filed for workers' comp through the Industrial Commission and that she has been ruled unfit for duty or unable to work by the workers' comp doctor or she presented that for workers' comp that she is not able to work. So, yes, this is now workers' comp. Council Member Aguilar asked if they'd then gotten to a second and third opinion on this. Mayor Hing said they were there to decide that.

Attorney Wencker said it was his understanding there had not been a second opinion. He has not received any information that had been done. That was something they could ask, but his opinion is it has not been done.

Council Member Peralta told Ms. Oliver she wanted to know when the very first day was that she started taking time off because of this illness, not Family Medical Leave. Ms. Oliver said she was not prepared, had only come prepared to give the status. She did not have that information. She did not want to give the incorrect information. Council Member Peralta said, okay, you do not know when your first day of illness was. Ms. Oliver said, no, she is saying she does not have that with her. She made further comments. Council Member Peralta asked about how many days Ms. Oliver had off since this started. Ms. Oliver said that would be in her personal file. Council Member Peralta said they had asked for this information before.

Vice Mayor Lopez told Ms. Oliver it was her understanding she had exhausted all of her FMLA. Ms. Oliver said yes.

Council Member Peralta asked if Ms. Oliver still had medical time. Ms. Oliver said she still had medical time and vacation.

There were further detailed questions and responses between the council and Ms. Oliver.

Attorney Wencker said they could have an executive session not open to the public to discuss personnel, hiring, firing, compensation, negotiations for those same things, any of those kinds of things about a personnel issue. The person who is the subject of those discussions can ask that it be in open session. On tonight's agenda they listed it for discussion of the personnel matter, as well as legal advice from the town attorney. They could still go into executive for legal advice, separate and apart from discussing the personnel issues with Ms. Oliver. There can still be a closed door executive session for legal advice that would not include discussing the personnel issues.

Council Member Peralta said her reason for requesting the meeting was they needed answers. They do not know what is going on. Mayor Hing said they were there and Ms. Oliver had explained her condition. Council Member Gutierrez said it was probably a medical situation they were not privy to because of the pitfalls of asking those types of questions. He thought the council has taken the position of relying on Ms. Oliver getting better. Now they were at the end of the FMLA leave and now looking at another additional time period. He thought that was what they were just talking about. Now they are at the end of that time period with their town manager and now they have additional medical information that is in her personal file and not really for public dissemination.

There were further detailed comments, disagreements, questions and responses. The discussion touched on when the council was notified of Ms. Oliver's notification of the doctor's letter. The mayor's response was that he had thought to wait until the next council. The deputy town manager's response touched on his concern about Ms. Oliver's privacy and consultation with the attorney.

At one point Council Member Tomerlin made a motion to go into executive session but it was not recognized by the chair. At one point Ms. Oliver was asked if she wished to continue with the open session. She responded in the affirmative and said that hearing all the argument she felt safer in open session. (Laughter in the room.)

Attorney Wencker said there is another subsection of the executive session statute that allows them to hold an executive session for the examination of records that are not found reasonable for the public. That was not on the agenda. He did not realize that was what they would be doing. They do not have those records available to them right now.

MOTION: Council Member Tomerlin moved to go into executive session allowing the mayor, town council members, town attorneys, deputy town manager and minute taker Cindy Tracy, with the possibility for bringing in Ms. Melanie Oliver for questions . Council Member Tameron seconded.

VOTE: The motion passed unanimously.

Council entered executive session at 7:40 p.m.

MOTION: Council Member Tameron moved to return to open session. Council Member Tomerlin seconded.

VOTE: The motion carried unanimously.

Council returned to open session at 8:15 p.m.

F: ADJOURNMENT:

Mayor Hing said they did have an executive session for consultation with the attorney.

MOTION: Council Member Aguilar moved to adjourn. Vice Mayor Lopez seconded.

VOTE: The motion carried unanimously.

Mayor Hing adjourned the meeting at 8:16 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Council Meeting of the Town Council of the Town of Superior held on the 28th day of September 2011. I further certify that the meeting was duly called and held and that a quorum was present.

/s/

Lou Digirolamo _____

Deputy Town Clerk/Police Chief

These Minutes were compiled and transcribed by

Cindy Tracy

An Independent Contractor

(Final editing of these minutes and their content is completed and verified by staff members of the Town of Superior.)